



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

AUG 17 2016

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Will Dellinger  
JW Demolition LLC  
2130 North Tryon Street  
Charlotte, North Carolina 28206

Re: JW Demolition LLC  
Consent Agreement and Final Order  
Docket No. TSCA-04-2016-2906(b)

Dear Mr. Dellinger:

Enclosed please find a copy of the executed Consent Agreement and Final Order (CAFO) as filed with the Regional Hearing Clerk (RHC) in the above-referenced matter. The CAFO is effective on the date it is filed with the RHC, and the penalty due date is calculated from the effective date.

If you have any questions or concerns, please contact Kris Lippert, of my staff, at (404) 562-8605.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth  
Chief, Enforcement and Compliance Branch  
Resource Conservation and Restoration Division

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

USEPA, REGION 4  
OFFICE OF REGIONAL  
COUNSEL

2016 AUG 17 AM 9:26

HEARING CLERK

In the Matter of: )  
)  
JW Demolition, LLC )  
)  
)  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-04-2016-906

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Resource Conservation and Restoration Division (RCRD), United States Environmental Protection Agency, Region 4 (EPA). Respondent is JW Demolition, LLC.
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has delegated this authority to the Director of RCRD by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCRD has the authority to commence an enforcement Action as the Complainant in this matter and has the authority to sign Consent Agreements memorializing settlements between the EPA and Respondent.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of EPA promulgated regulations in 40 C.F.R. Part 761, pertaining to Polychlorinated Biphenyls (PCBs). Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$32,500 for each such violation occurring between March 15, 2004, and January 12, 2009, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring after January 12, 2009, and before November 3, 2015, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Kris Lippert  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960  
(404) 562-8605

### **III. Specific Allegations**

6. Respondent is a “person” as defined in 40 C.F.R. § 761.3. Respondent is in the business of demolition services.
7. On or about October 15, 2015, a site visit was conducted by the North Carolina Department of Environmental Quality (NCDEQ) at 338 Pea Ridge Road, New Hill, North Carolina 27562 (the facility). At the time of the site visit, Respondent was performing demolition services at the facility, including disposal of transformers containing PCB oils, and as such, was subject to 40 C.F.R. Part 761.
8. At the time of the site visit, thirteen (13) Westinghouse Inerteen PCB Transformers were at the facility; of these, two were energized and in use. “PCB Transformer” is defined in 40 C.F.R. § 761.3 as any transformer that contains 500 ppm (parts per million) PCB or greater. Eleven of the PCB Transformers were out of service and were being stored for disposal.
9. “PCB Article” is defined in 40 C.F.R. § 761.3 as any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs.
10. “PCB Item” is defined in 40 C.F.R. § 761.3 as any PCB Article, PCB Article Container, PCB Container, PCB Equipment or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs. PCB Transformers are PCB Articles and PCB Items.
11. Pursuant to 40 C.F.R. § 761.65(b), PCBs and PCB Items designated for disposal must be stored in an area with an adequate roof, walls, and non-porous floor with curbing. At the time of the inspection, the PCB Transformers were not stored in areas with an adequate roof, walls and non-porous floor with curbing. Therefore, Respondent violated 40 C.F.R. § 761.65(b).
12. Pursuant to 40 C.F.R. §§ 761.40(a)(10) and 761.65(c)(3), storage areas used to store PCBs and PCB Items for disposal are required to be marked in accordance with 40 C.F.R. § 761.45(a). At the time

of the inspection, the PCB Transformers stored for disposal were not stored in areas that that were marked with the Large PCB Mark (M<sub>L</sub>). Therefore, Respondent violated 40 C.F.R. §§ 761.40(a)(10) and 761.65(c)(3).

13. Pursuant to 40 C.F.R. § 761.65(c)(5), PCB Items in storage for disposal shall be checked for leaks at least once every 30 days. Records of inspections, maintenance, cleanup and disposal must be maintained in accordance with 40 C.F.R. § 761.180(a). Respondent failed to maintain storage records for the PCB Transformers stored for disposal. Therefore, Respondent violated 40 C.F.R. § 761.65(c)(5).

14. Pursuant to 40 C.F.R. § 761.65(c)(8), PCB Items must be marked with the date when they were removed from service for disposal. At the time of inspection, the PCB Transformers were not marked with the date they were removed from service. Therefore, Respondent violated 40 C.F.R. § 761.65(c)(8).

#### **IV. Consent Agreement**

16. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.

17. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.

18. For the purposes of achieving a resolution by settlement, Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.

19. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA and the PCB regulations.

20. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO,

EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.

21. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

**V. Final Order**

22. Respondent is assessed a civil penalty of THIRTY-THREE THOUSAND SEVEN HUNDRED TWENTY-SEVEN DOLLARS (\$33,727). Six payments will be made to complete payment of the entire civil penalty including interest. The first payment shall be made within thirty (30) days after the effective date of the CAFO. The subsequent five payments shall be due in 30 day intervals thereafter, or as specified in the payment schedule below. Including the civil penalty and interest, the total amount that will be paid upon completion of all payments will be THIRTY-FOUR THOUSAND EIGHT DOLLARS and TWENTY-ONE CENTS (\$34,008.21). Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	within 30 days after the effective date of the CAFO	\$5,668.04
2	within 60 days after the effective date of the CAFO	\$5,668.04
3	within 90 days after the effective date of the CAFO	\$5,668.04
4	within 120 days after the effective date of the CAFO	\$5,668.04
5	within 150 days after the effective date of the CAFO	\$5,668.04
6	within 180 days after the effective date of the CAFO	\$5,668.01

23. Respondent shall remit each payment of the penalty by either (1) wire transfer, in accordance with instructions provided below, or (2) by a cashier's or certified check made payable to the "Treasurer,

United States of America." If payment is made by check through the U.S. Postal Service,

Respondent shall send the check to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000.

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

For payment submittal by any overnight delivery service (Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
(314) 425-1819

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

For payment by wire transfer, in lieu of a cashier's or certified check, if desired, should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045

**Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."**

24. At the time of each payment, Respondent shall send a written statement that the payment has been made in accordance with this CAFO (along with a copy of the check if payment is made by check, or indicating that payment was by wire transfer) to each of the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960;

Kris Lippert  
RCRD Enforcement and Compliance Branch  
U.S. EPA Region 4  
61 Forsyth Street SW  
Atlanta, Georgia 30303-8960

and

Saundi Wilson  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

25. If the Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) shall become immediately due and payable on the 31<sup>st</sup> day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.
26. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
27. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of THIRTY-THREE THOUSAND SEVEN HUNDRED TWENTY-SEVEN DOLLARS (\$33,727) within 30



days of the effective date of this CAFO. In addition, Respondent may at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

28. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
29. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agree not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon Respondent, its successors and assigns.
32. Each undersigned representatives of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

#### **VI. Effective Date**

33. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**Docket No.:** TSCA-04-2016-2906(b)

**Respondent:** ~~JW Demolition, LLC~~

By: ~~\_\_\_\_\_~~ (Signature) Date: 7/26/16

Name: J Will Dellinger (Typed or Printed)

Title: CEC (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By: G. Alan Farmer (Signature) Date: 8/9/2016

G. Alan Farmer, Director  
RCR Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 16<sup>th</sup> day of August, 2016.

By: Tanya Floyd  
Tanya Floyd  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CAFO), for JW Demolition LLC, Docket Number: TSCA-04-2016-2906(b), on 8-17-16, and on 8-17-16, served the parties listed below in the manner indicated:

Michi Kono (Via EPA Internal Mail)  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

Bob Caplan (Via EPA Internal Mail)  
Senior Attorney  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

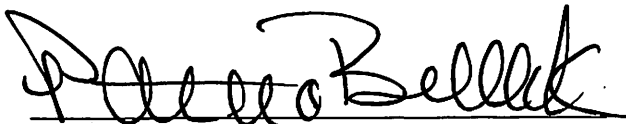
Kris Lippert (Via EPA Internal mail)  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

Quantindra Smith (Via EPA Internal mail)  
Enforcement and Compliance Branch  
Resource Conservation and Restoration Division  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

Mr. Will Dellinger (Via Certified Mail – Return Receipt Requested)  
JW Demolition  
2130 North Tryon Street  
Charlotte, North Carolina 28206

Date:

8-17-16



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9511